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FAX

Date November 4, 2004

To Examiner St. John Courtenay III

Of PTO Group Art Unit 2126

Fax 703-872-9306

From David J. Cushing

Subject Supplemental Amendment

Our Ref A7145 Appln No 09/274,979

Conf No 9188 Inventors Phillip MERRICK, et al.

Pages 21 (including cover sheet)

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This fax filing includes:

1. This cover sheet
2. Petition for Extension of Time
3. Request for Refund
4. Supplemental Amendment

CERTIFICATION OF FACSIMILE TRANSMISSION

Sir:

I hereby certify that the above identified correspondence is being facsimile transmitted to Examiner St. John Courtenay III at the Patent and Trademark Office on November 4, 2004, at 703-872-9306.

Respectfully submitted,


David J. Cushing

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PATENT APPLICATION**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of

Phillip MERRICK, et al.

Attorney Docket A7145

Appln. No.: 09/274,979

Confirmation No.: 9188

Group Art Unit: 2126

Filed: March 23, 1999

Examiner: COURTENAY

For: XML REMOTE PROCEDURE CALL (XML-RPC)

REQUEST FOR REFUNDCommissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants filed a response on September 3, 2004 to a final Office action mailed June 4, 2004. The response placed the application in condition for allowance. The examiner refused entry of the amendment on the grounds that some of the amended claims referred to later claims rather than to preceding claims.

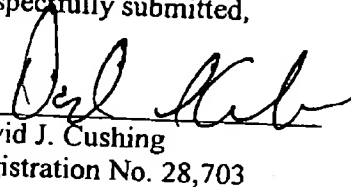
The undersigned telephoned the examiner and pointed out the last paragraph of MPEP 608.01(n)(IV), which specifically provides that this may happen during prosecution and is to be addressed by the examiner when renumbering claim upon allowance. However, the examiner advised that since entry of the September 3, 2004, he could not enter that amendment and the only recourse would be to file another response.

Applicants could have filed a petition to force entry of the amendment on the grounds that the reasons for refusal to enter the amendment were improper, the petition would have been granted and no petition fee or extension fee would have been due. Applicants have instead filed

Appl. No. 09/274,979
Request for Refund

a supplemental response which does nothing other than move dependent claims to the end so that they now refer to preceding claims. It is respectfully requested that the extension fee required for the filing of the Supplemental Amendment be refunded, since the extension was only required due to an error by the U.S. Patent & Trademark Office.

Respectfully submitted,


David J. Cushing
Registration No. 28,703

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